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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-00-003-52507 Office: California Service Center

Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a minister at a new affiliated church it plans to establish at an annual salary of \$15,000.

The director denied the petition finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The director noted that the beneficiary had been a student in a United States high school during most of the two-year qualifying period and concluded that he could not have accrued the requisite experience as a minister.

On appeal, an official of the petitioning church stated, in pertinent part, that the beneficiary attended high school part-time, and served the church as a minister on a full-time basis during the two-year period.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is an independent church recognized by the Internal Revenue Service with the appropriate tax exempt status. The petitioner did not provide an estimate of the size of its congregation or the number of employees. The beneficiary is described as a twenty-one-year-old male native and citizen of Mexico who last entered the United States on an undisclosed date and in an undisclosed manner. The record reflects that the beneficiary has resided in the United States with his parents who are lawful permanent residents.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements.

A petitioner must establish that the beneficiary is qualified as a minister as defined in these proceedings.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner claims to have ordained the beneficiary as a minister on an unspecified date.

The evidence of record is insufficient to establish that the beneficiary is a qualified minister for the purposes of this proceeding. First, the petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards.

Second, simply claiming an individual is a minister or producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978). In this case, there is no evidence that the beneficiary has completed any formal theological training in order to be considered a minister. As noted by the director, the beneficiary only recently completed high school.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on October 4, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least October 4, 1997.

In this case, an official of the petitioning church testified that the beneficiary has served as a minister since February 1997 without compensation.

It must be concluded that the petitioner has failed to overcome the director's objection. First, as noted above, the record does not establish that the beneficiary is qualified as a minister. Therefore, he could not have accrued experience in that religious vocation.

Second, the record reflects that the beneficiary graduated from a high school in San Diego, California in June 1999. Therefore, even if he were a minister, he was not solely engaged in a religious vocation due to his secular studies.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements. (Emphasis added.)

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner seeks to employ the beneficiary at a subordinate church it plans to establish in Tijuana, Mexico. Special immigrant classification is not available to an individual for the purpose of employment outside the United States, even if the parent organization of the employer is located in the United States.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Service must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Service must consider that the possible rationale for the instant petition is the church's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this vocation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.